

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Implementation of Section 621(a)(1) of the  
Cable Communications Policy Act of 1984  
as amended by the Cable Television  
Consumer Protection and Competition Act  
of 1992

MB Docket No. 05-311

**REPLY COMMENTS OF  
CERTAIN FLORIDA MUNICIPALITIES**

Reply Comments Submitted by:

Village of Bal Harbour, Florida  
City of Coconut Creek, Florida  
City of Coral Gables, Florida  
City of Miramar, Florida  
Town of Golden Beach, Florida  
City of Homestead, Florida  
Islamorada Village of Islands, Florida  
City of Weston, Florida, and  
City of Winter Haven, Florida

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March 28, 2006

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The Village of Bal Harbour, the City of Coconut Creek, the City of Coral Gables, the City of Miramar, the Town of Golden Beach, the City of Homestead, Islamorada Village of Islands, the City of Weston, and the City of Winter Haven (hereinafter referred to collectively as "Florida Cities") hereby respectfully submit to the Commission their reply comments in this proceeding.<sup>1</sup> The Florida Cities submit this reply in response to the comments submitted by BellSouth Corporation and its subsidiaries (hereinafter "BellSouth").

**A. BellSouth's Facts on Coconut Creek's Cable Franchise are Incorrect.**

BellSouth states in Exhibit A of its comments that it took 7.5 months to obtain a franchise from the City of Coconut Creek ("Coconut Creek") after it filed a franchise application on July 17, 1996.<sup>2</sup> BellSouth then uses this alleged fact in its argument to the Commission for a national franchise.

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<sup>1</sup> *In the Matter of Implementation of Section 621(a) (1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television and Consumer Competition Act of 1992*, MB Docket No. 05-255, Notice of Proposed Rulemaking (November 18, 2005).

<sup>2</sup> *Comments of BellSouth Corporation and BellSouth Entertainment, LLC*, at 10-18 and Declaration of Thompson (Tom) T. Bawls II, at ¶ 4, and its Exhibit A.

On February 27, 1997, Coconut Creek did issue a franchise to BellSouth Interactive Media Services Inc. ("BIMS"), a BellSouth subsidiary established specifically for the purposes of providing wireless cable services, not services in conjunction with the telephone services. Through the franchise application process Coconut Creek inquired as to the rights-of-way requirements of BIMS. Such questions, however, went unanswered by BIMS as it had no operating experience with video services and was not able to provide any operating plans or estimates. The inability of BIMS to establish an operating plan and its failure to respond to the questions of Coconut Creek in regards to its use of the rights-of-way, was the main reason why it took several months to conclude the franchise negotiations. Nevertheless, both Broward County, Florida (where Coconut Creek is located) and Coconut Creek entered into franchise agreements with BIMS within weeks of each other.

BellSouth forgot to mention in its comments, however, that Coconut Creek terminated the BIMS franchise. On October 26, 1999, Coconut Creek notified BIMS that it was in default of the franchise agreement for: (1) failure to complete construction (actually no construction took place), (2) failure to file updated plans for construction completion, and (3) failure to keep Coconut Creek apprised of changes to its construction plan. Pursuant to the franchise agreement, BIMS was required to respond to Coconut Creek's letter within fifteen (15) days. BIMS never responded to the letter. Accordingly, the City terminated the franchise agreement with BellSouth's subsidiary.

**B. BellSouth Applied for and Obtained Cable Franchises in Florida, But Has Not Provided Services in Most of Franchised Areas.**

BellSouth conceded in its comments that after the Telecommunication Act of 1996, it applied for and obtained several franchises in Florida.<sup>3</sup> These cable franchises cover millions of households.<sup>4</sup>

The fact is that BellSouth, after almost ten years since it obtained franchise authority from all these Florida municipalities, has still not built the necessary networks and provided cable services to most of these areas.<sup>5</sup> For example, BellSouth provides service to only about 6,000 subscribers in Miami-Dade County, even though its franchise

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<sup>3</sup> *Comments of BellSouth Corporation and BellSouth Entertainment, LLC*, at 10-18 and Declaration of Thompson (Tom) T. Bawls II, at ¶ 4, and its Exhibit A (in this exhibit BellSouth provides the dates such franchises were granted by the local franchising authorities ("LFA")).

<sup>4</sup> See *BellSouth Comments*, filed in MB Dkt. No. 05-255, at 1-2 (Sept. 19, 2005)(noting that BellSouth currently holds franchises passing approximately 1.4 million households).

<sup>5</sup> See *Comments of Miami-Dade County, Florida*, at 2-4.

with the County allows it to provide service to over 200,000 households.<sup>6</sup> Moreover, as stated above, BellSouth obtained a franchise from the City of Coconut Creek, but it never provided service. Obviously, BellSouth's decision not to provide service in Florida is for business reasons and not because of any inability to obtain cable franchises from the Local Franchising Authority ("LFA").

**C. The Commission should Inquire into the Business Reasons Why Incumbent Local Exchange Carriers Are Not Providing Cable Service.**

Although BellSouth has several cable franchises in Florida it could have secured more authorizations in Florida if it wanted too. BellSouth, however, decided not to apply for additional cable franchises in Florida. The comments from several Florida municipalities confirm that BellSouth has not applied for franchises in many Florida municipalities.<sup>7</sup> Therefore, BellSouth cannot now argue that the reasons it does not have more cable franchises in Florida is because of an allegedly slow or burdensome process from the LFA.<sup>8</sup> Clearly, BellSouth must have other reasons.

BellSouth's experience in Florida demonstrates that it is not the local franchising process that has prevented or delayed BellSouth's provision of cable service in Florida. Rather, BellSouth has legal authority to provide cable service to millions of households in the State, but has chosen for other reasons not to do so. Telephone companies, in general, have decided not to provide video services to their franchised territories. The Commission should inquire telephone companies, especially those that have obtained cable franchises for years, why they have not constructed cable systems and offered cable service.

The Florida Cities submit that a main reason BellSouth and other telephone companies are not providing cable service in the vast majority of their telephone service territories is the substantial number of exclusive, long-term contracts between cable service providers and Multiple Dwelling Units ("MDU"), Multiple Tenant Environments ("MTE"), and/or home owners associations (hereinafter referred to as "Bulk Contracts").

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<sup>6</sup> *Comments of Miami-Dade County, Florida*, at 2 and 4 ("even after nine years of operating without a full build-out requirement, Bell South currently provides cable television service to less than 6,000 subscribers").

<sup>7</sup> *Comments Submitted by Certain Florida Municipalities*, at 22-24; *Comments of Lee County, Florida*, at 6; *Comments of the City of St. Petersburg, Florida* at 4-5; *Comments of the City of West Palm Beach, Florida*, at 5-6; *Comments of Clay County, Florida*, at 5-6; *Comments of the City of Hialeah, Florida*, at 6-7; *Comments of the City of Delray Beach, Florida*, at 5-6; *Comments of the City of Lake Worth, Florida*, at 6; *Comments of the City of Cape Coral, Florida*, at 5-6; *Comments of the City of Palmetto, Florida*, at 1-2; *Comments of Manatee County, Florida*, at 1-7; *Comments of City of Fort Lauderdale, Florida*, at 1-3.

<sup>8</sup> See *Comments of Cablevision Systems Corporation*, at 12-14; *Comments of Comcast Corporation* ("An ILEC cannot claim that a franchising authority has unreasonably refuse to grant a franchise when the ILEC unreasonably refuses to apply for one"), at 11 and 18-19.

Under such Bulk Contracts homeowners are forced to pay for cable service under homeowners' or condominium' association dues or as part of the rent, even if they went to obtain services from a competitor such as direct broadcast satellite, or even if they do not want to obtain cable service at all. Bulk Contracts lock subscribers for several years and impede real cable competition.

Such Bulk Contracts are widespread and common in Florida and cover a substantial percentage of the cable service subscribers. For example, in some Florida municipalities the percent of subscribers covered by exclusive agreements is as high as 98% of total households.<sup>9</sup> The Florida Cities estimate that hundreds of thousands of households are under exclusive Bulk Contracts in just the State of Florida. Cable providers do not readily share information as to the communities and number of households under such exclusive Bulk Contracts. However, the Florida Cities have been able to obtain some information on some of the communities within their jurisdictions as well as on other communities that are subject to such type of Bulk Contracts. See Table No. 1. Table No. 1 shows that even in a limited group of 7 municipalities in Florida there are around 65,000 households locked into Bulk Contracts. Therefore, even if a competitor were to obtain a franchise covering these bulk serviced communities, this would do nothing to promote competition for these 65,000 households. Even direct broadcast satellite providers are unable to compete in these communities because residents would still be obligated to pay for cable services under the bulk contracts.

In the City of Weston ("Weston"), for example, there are 14,914 households locked into to one exclusive Bulk Contract.<sup>10</sup> The Weston Bulk Contract covers mostly single family homes. Weston and a homeowners' association engaged in litigation with the cable provider to attempt to terminate this Bulk Contract, which under its terms continued perpetually with automatic renewals. Eventually, Weston, the association and the cable provider entered into a settlement whereby the Bulk Contract terminates in seven years.

Real concerns exist over exclusive Bulk Contracts in MDU, MTE, and/or with homeowners associations in Florida. Such exclusive Bulk Contracts: (1) create a barrier to entry for other cable companies and direct broadcast satellite providers thus preventing competition; (2) restrict consumers' choices; (3) force consumers to pay for services they may not be able to afford; and (4) allow a monopoly cable operator discretion to alter cable services and rates without fear of losing customers or revenue. Therefore, such exclusive Bulk Contracts are inconsistent with the Commission's goals of advancing

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<sup>9</sup> Adelphia has stated that over 98% of its subscribers in the City of Miramar and in the adjoining City of Pembroke Pines are under exclusive bulk contracts.

<sup>10</sup>City of Weston's Petition for Special Relief, *In the Matter of Advocate Communications, Inc., d/b/a Advanced Cable Communications*, September 7, 2004, CSR No. 6548-R, FCC. .

Congress's objectives in the Telecommunications Act of 1996 to promote competition in cable communications.<sup>11</sup>

This Commission previously addressed the regulation of exclusive contracts and determined that a ban on exclusive contracts for telecommunications service in commercial MTE would foster competition in that market.<sup>12</sup> The Commission, however, limited the ban to commercial properties because the record was insufficient to address a ban in residential properties.<sup>13</sup> While no party supported exclusive contracts in the commercial settings, some parties did support such contracts in the residential setting.

The Commission declined to ban or cap exclusive and perpetual contracts for the provision of video services in MDUs.<sup>14</sup> With respect to perpetual contracts, the Commission acknowledged that "most commenters ... assert that perpetual contracts effectively bar alternative and/or new MVPD's entry into the MDU market and are inherently anti-competitive." However, the Commission concluded that the record regarding MDUs did "not demonstrate the existence of widespread perpetual contracts nor support the need for government interference at this time."

The Florida Cities respectfully submit that the Commission should carefully evaluate these types of contracts and should use its authority to allow associations under such exclusive Bulk Contracts to terminate such contracts and to subscribe for service with a competitor.

### CONCLUSION

It is obvious from BellSouth's comments that the local franchising process in Florida has not prevented or prohibited BellSouth from providing cable service. There are other reasons that the Commission should explore as to why BellSouth and other telephone companies are not providing cable service to the vast majority of households for which they have authority to provide such services.

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<sup>11</sup> The City of Weston, Florida and the Town Foundation, Inc. filed comments with the Commission on July 23, 2004, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, and also requested the Commission to declare residential exclusive bulk agreements illegal and to issue reasonable termination provisions and/or procedures.

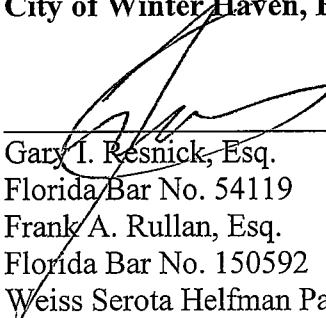
<sup>12</sup> *First Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-217, *Fifth Report and Order and Memorandum Opinion and Order*, CC Docket No. 96-98, and *Fourth Report and Order and Memorandum Opinion and Order*, CC Docket No. 88-57, 15 FCC Rcd 22983 (2000).

<sup>13</sup> *Id.* at ¶ 33.

<sup>14</sup> *First Order On Reconsideration and Second Report and Order*, CS Docket 95-184, MM Docket No. 92-260, 18 FCC Rcd. 1342, 1370 (2003).

Respectfully submitted,

**Village of Bal Harbour, Florida  
City of Coconut Creek, Florida  
City of Coral Gables, Florida  
City of Miramar, Florida  
Town of Golden Beach, Florida  
City of Homestead, Florida  
Islamorada Village of Islands, Florida  
City of Weston, Florida, and  
City of Winter Haven, Florida**



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**TABLE NO. 1**  
**EXAMPLES OF SOME SOUTH FLORIDA ASSOCIATIONS**  
**WITH EXCLUSIVE BULK CABLE TV SERVICE AGREEMENTS**

Community	City	Households	Provider
Chapel Trail	Pembroke Pines	3,676	Comcast
Grand Palms	Pembroke Pines	1,131	Adelphia
Pembroke Falls	Pembroke Pines	2,067	Adelphia
Pembroke Isles	Pembroke Pines	1,251	Adelphia
Towngate	Pembroke Pines	2,100	Comcast
Pembroke Shores	Pembroke Pines	1,182	Adelphia
Cove at French	Pembroke Pines	188	Adelphia
Encantada	Pembroke Pines	635	Adelphia
Lido Isles	Pembroke Pines	200	Adelphia
Stoneridge Lake	Pembroke Pines	230	Comcast
Walnut Creek	Pembroke Pines	895	Adelphia
Waterways	Pembroke Pines	173	Adelphia
Alhambra	Pembroke Pines	136	Adelphia
Antigua	Pembroke Pines	155	Adelphia
Riviera Isles	Miramar	2,214	Adelphia
Silver Lakes	Miramar/Pines	5,185	Adelphia
Silver Shores	Miramar	1,249	Adelphia
Sunset Lakes	Miramar	1,865	Adelphia
Bluegrass Lakes	Miramar	2,700	Adelphia
Monarch Lakes	Miramar	2,219	Adelphia
Huntington	Miramar	731	Adelphia
Emerald Estates	Miramar	607	Advanced Cable
Windsor Palms	Miramar	408	Adelphia
Silver Isles	Miramar	323	Adelphia
Regalo	Miramar	119	Adelphia
Town Foundation	Weston	14,914	Advanced
Coconuts	Weston	381	Comcast
Bonaventure	Weston	100	Greater Florida
Univ. of Miami	Coral Gables	2,124	Comcast
Pelican Bay	Naples	6,500	Comcast
Wynmoor	Coconut Creek	5,257	Adelphia
Kings Point	Tamarac	3,769	Comcast

Total		<u>64,684</u>	
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